

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Capital 7 Funding,

Plaintiff

- against -

Wingfield Capital Corporation, Prestige Investment
Associates, Inc., d/b/a Prestige Investments USA,
and First Choice Payment Systems, Inc., d/b/a 1st
Choice Payments

Corporate Defendants

And

Burgis Sethna, a/k/a Seth Burgess, Heath
Wagenheim, Joseph Rabito, Damian Laljie a/k/a
Damian Laltie, and John Does 1 through 15,

Individual Defendants

-----X
TO: DOUGLAS C. PALMER, CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiff in the above-captioned action request that defaults be entered against Defendant Joseph Rabito, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to timely plead or otherwise defend this action as fully appears from the court file and the attached declaration of Nicholas Bowers, Esq.

Dated: Brooklyn, New York
July 20, 2020

Respectfully Submitted,

_____/s/_____

Nicholas Bowers, Esq.

Gary Tsirelman P.C.

Attorneys for Plaintiff

129 Livingston St.

Brooklyn NY 11201

Email: nbowers@gtmdjd.com

UNITED STATES DISTRICT COURT
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Damian Laltie, and John Does 1 through 15,

Individual Defendants

Docket No. 17-cv-2374

**Declaration in Support of Request
for Certificate of Default**

-----X
DECLARATION OF NICHOLAS BOWERS, ESQ.

I, Nicholas Bowers, declare under penalty of perjury that:

1. I am an associate attorney with Gary Tsirelman, P.C., counsel to Plaintiff Capital 7 Funding in the above-captioned matter.
2. I submit this declaration pursuant to Rule 55.1 of the Local Civil Rules for the Eastern District of New York and in support of Plaintiff's request for a certificate of default against Defendant Joseph Rabito ("Rabito").
3. This action seeks damages from Rabito for his conduct and direction of Defendants' fraudulent enterprise that defrauded Plaintiff.

4. Jurisdiction of this action is based upon 28 U.S.C § 1331 because Plaintiff brings its claims, in part, under the laws of the United States, specifically 18 U.S.C. § 1961 through 1968 (the Racketeer Influenced and Corrupt Organizations (“RICO”) Act). This Court has supplemental jurisdiction of Plaintiff’s state law claims pursuant to 29 U.S.C. § 1367. This District is an appropriate venue pursuant to 28 U.S.C. § 1391, one or more of the Defendants resides in the Eastern District of New York and because this is the District where a substantial amount of the activities forming the basis of the Complaint occurred.

5. The Complaint was filed on April 20, 2017. ECF No. 1. Plaintiff filed an Amended Complaint on May 4, 2017. ECF No. 4. Nicholas Rosario both inquired and confirmed that Rabito was not a member of the United States military and served a true and correct copy of the Amended Complaint was served on Rabito on June 3, 2017. *See Exhibit A*

6. Rabito retained counsel and sought an extension of his time to answer on July 24, 2017. ECF Nos. 20 and 21. Plaintiff subsequently filed a Second Amended Complaint on August 31, 2017. ECF No. 26.

8. Rabito requested a pre-motion conference from the Court regarding a motion to dismiss the Second Amended Complaint. ECF No. 29. The Court issued an order on March 22, 2019 allowing all Defendants to file motions to dismiss.

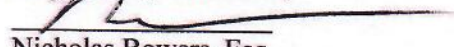
8. Rabito filed a motion to dismiss the Second Amended Complaint on June 21, 2019. The Court denied Rabito’s motion in part on May 29, 2020, dismissing only the fraud and unjust enrichment claims against Laljie. ECF No. 82.

9. Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A), Rabito's responsive pleading to the remaining claims was due filed or served on June 15, 2020. Rabito has not filed or served any responsive pleading or appeal after filing the motion to dismiss. Rabito's time to respond has expired.

10. This action seeks judgment against Rabito for compensatory damages, punitive damages, treble damages, costs, and reasonable counsel fees.

Dated: Brooklyn, New York
July 20, 2020

Respectfully Submitted,



Nicholas Bowers, Esq.
Gary Tsirelman P.C.
Attorneys for Plaintiff
129 Livingston St.
Brooklyn NY 11201

Affidavit of Service - Suitable Age Person

United States District Court, EASTERN DISTRICT, New York

CASE NO: 1:17-CV-02374-RRM-ST

Plaintiff / Petitioner: CAPITAL 7 FUNDING

vs.

Defendant / Respondent: WINGFIELD CAPITAL CORPORATION, ET AL.

I **NICHOLAS ROSARIO** being duly sworn deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the state of NEW YORK. That on **June 03, 2017** at **01:42 PM** at **21 WILLETT AVENUE, APT. # PH09, PORT CHESTER, NY 10573**, deponent served the within:
Summons In A Civil Action; Rider; Amended Complaint

on **JOSEPH RABITO** herein known as Recipient. Said service was effected in the following manner: By delivering thereat a true copy of each to James Lovingthomas, Security/concierge, a person of suitable age and discretion. That person was also asked by deponent whether said premises was the recipient's DWELLING place and their reply was affirmative.

Deponent also enclosed a copy of the same in a postpaid sealed envelope, properly addressed to recipient's DWELLING place at **21 WILLETT AVENUE, APT. # PH09, PORT CHESTER, NY 10573** by regular mail and deposited said envelope in an official depository under the exclusive care and custody of the United States Postal Service within State of NEW YORK on JUNE 5, 2017. First class mail envelope marked Personal and Confidential.

Deponent further states upon information and belief that said person so served is not in the Military Service of the State of NEW YORK or of the United States as the term is defined in either the State or Federal statutes. Deponent further states that deponent describes the person actually served **James Lovingthomas** as follows: **Black, Male, 5' 9", 160 - 170 lbs, Black hair, Brown eyes, glasses, 25 - 30 years**


Attempts:

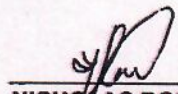
Date: June 03, 2017 Time: 01:42:33 PM GPS: 41.002228, -73.660446

NOTES: ACCESS TO PH09 WAS DENIED, RECIPIENT STATED HE IS AUTHORIZED TO ACCEPT.

Documents were served in accordance with CPLR 308.

Sworn to before me on the 5 day
of June, 2017.


CAROLL RAMSEY
Notary Public - State of New York
No. 01RA6028190
Qualified in Nassau County
Commission Expires: July 26, 2017


NICHOLAS ROSARIO
License Number: N/A

UNDISPUTED LEGAL, INC., 590 MADISON AVENUE, 21ST FLOOR, NEW YORK, NEW YORK, 10022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Capital 7 Funding,

Plaintiff

Docket No. 17-cv-2374

- against -

Certificate of Default

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And

Burgis Sethna, a/k/a Seth Burgess, Heath
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Damian Laltie, and John Does 1 through 15,

Individual Defendants

-----X
I, Douglas Palmer, Clerk of the Court of the United States District Court for the Eastern
District of New York, do hereby certify that Defendant Joseph Rabito has not filed an
answer or otherwise moved with respect to the above-captioned action as fully appears from the
court file herein and from the Declaration of Nicholas Bowers, annexed hereto. The default of
Defendant Joseph Rabito is hereby noted pursuant to Rule 55(a) of the Federal Rules of
Civil Procedure.

Dated: Brooklyn, New York
_____, 2020

DOUGLAS C. PALMER
Clerk of Court

By: _____
Deputy Clerk